IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

MFA.No. 21 of 2000()

OPMV.463/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT:

SULAIMAN, S/O. MUHAMMED, PALLIPURATHVALAPPIL HOUSE, PALLIPADAM, P.O. CHAZHIYATTIRI, PERINGOD,PALAKKAD DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS:
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1. T.J. JOHNSON, THEKKAPATHINKAL HOUSE, P.O. CHELAKKARA, THOZUPADAM, CHELAKKARA, TRICHUR DIST.

2. VISWANATHAN, S/O. KUMARAN, PLAVALAPPIL HOUSE, PANGARAPPILLY, P.O. CHELAKKARA, THRISSUR DIST.

3. UNITED INDIA INSURANCE CO. LTD., KUNNAMKULAM BRANCH, KUNNAMKULAM, THRISSUR DIST.

BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR
SRI.BABU PAUL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 8/03/2007, THE COURT ON 16/3/2007 DELIVERED THE FOLLOWING:

P.R. Raman & Antony Dominic, JJ.
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M.F.A.No.21 of 2000
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Dated this the 16th day of March, 2007.

JUFGMENT

Antony Dominic,J.

Claimant is the appellant. In an accident that had occurred on 3.9.1995 at 4.15 p.m., when the appellant was travelling in a bus bearing registration No.KRP.9153, he fell down and sustained severe injuries. The vehicle was owned by the first respondent, driven by the second respondent and insured with the third respondent. Following the accident, he was taken to Divine Hospital, Wadakkancherry and later shifted to West Fort Hospital, Thrissur where also he was treated as an inpatient.

2. Ext.A5 is the wound certificate, which discloses that he had sustained fracture to the base of the 5th meta carpal of the left hand, fracture to the left scapula and fracture to the 5th and 8th ribs. There were lacerated wounds at different parts of the body. It is stated that the appellant was employed in Gulf and had come to his native place on leave when the accident had occurred. He had produced several

documents evidencing his employment and Ext.A15 is the certificate issued by his employer stating that he was drawing 120 Omani Riyals per month as salary. In support of the permanent disability he had suffered, the appellant had also produced Ext.A8 certificate to the effect that he was having 10% permanent disability. The petition was filed claiming Rs.2,50,000/- and by the impugned award, the Tribunal allowed a total compensation of Rs.43,750/- together with interest from 6.4.1996 and it is aggrieved by such award and seeking enhancement of the compensation that the present appeal is filed.

3. Counsel for the appellant restricted his submissions to two claims. According to him, although Ext.A8 certificate was to the effect that he had suffered a permanent disability of 10%, for no valid reason, on the ground that there was no convincing evidence regarding the exact percentage of disability, the Tribunal awarded the universal sum of Rs.10,000/- only. We notice that Ext.A8, though certified permanent disability of 10%, the appellant had not examined the Doctor, who had issued the certificate and therefore, although the certificate was marked, it was not properly proved. The least the appellant could have done was to have examined the Doctor, who issued the certificate, which alone could have lend credibility to the disability certified. Therefore, the Tribunal cannot be totally faulted for

the reasoning it had adopted.

4. However, we notice that the Tribunal itself made reference to Ext.A5 wound certificate, which discloses that he had suffered injuries to the base of the 5th meta carpal of left hand, fracture to the left scapula and fracture to the 5th and 8th ribs. There were lacerated wounds at different parts of the body. It is also an admitted fact that the appellant was initially treated in the Divine Hospital, Wadakkancherry and was later shifted for better treatment to West Fort Hospital, Thrissur. He also had to be an inpatient in the hospitals for a considerable period for recovering from the injuries he had sustained.

5. We cannot also approve the refusal of the Tribunal for accepting the certificate of permanent disability on account of the employment the appellant was still having. The fact that the appellant was employed by itself does not mean that the appellant did not suffer any permanent disability. Refusal of the Tribunal to accept the permanent disability is contradicted by the Tribunal's own statement that while examined as PW1 before the Tribunal, it had occasion to see that the injuries suffered by the appellant. Taking note of the over all circumstances of the case, we are inclined to hold that compensation for permanent disability should be awarded to the appellant taking 6%

as the permanent disability suffered by him.

6. This also calls for an assessment of monthly income of the appellant. Ext.A5 is the certificate produced by the appellant from his employer, which states that he was drawing 120 Omani Riyals per month. In spite of it, the Tribunal declined to attach any credibility to the certificate and chose to adopt a notional monthly income of the appellant and fixed a sum of Rs.1,250/-. This approach of the Tribunal, in the absence of any evidence to suggest that the certificate produced by the appellant was not worthy of acceptance, was not correct. Taking into account the income as certified by the employer of the appellant, we are inclined to take Rs. 8,000/- as monthly income of the appellant and quantify the compensation for permanent disability on that basis. Ext.A8 disability certificate certifies that the age of the appellant is noticed as 39 years. Adopting 16 as the multiplier and his monthly income at Rs.8,000/-, we hold that the appellant is entitled to Rs.92,160/- as compensation for the 6% permanent disability suffered by him and accordingly, the appellant will be entitled to Rs.92,160/- towards permanent disability suffered by him in the place of Rs.10,000/- awarded by the Tribunal.

7. The next grievance urged by the counsel for the appellant was that towards loss of earning, the Tribunal awarded compensation only

for three months, although the appellant had to be absent from his employment for more than seven months. The award itself shows that Ext.A14 certificate issued by the employer was to the effect that he was initially on leave for three months and had to remain absent on account of the injuries sustained for another four months. Thus, there was ample proof in support of the contention of the appellant that he had to be absent for seven months resulting in loss of earning during the said period. In such a case, there was no reason why the Tribunal had restricted the loss of earning for only three months. In our view, the appellant ought to have been awarded compensation for loss of earning for the entire seven months taking his average monthly salary at Rs.8,000/-. On this account, we award Rs.56,000/- as against Rs.3,750/- awarded by the Tribunal.

8. Thus, towards permanent disability and loss of earning, we award a total compensation of Rs.1,48,160/-. Deducting an amount of Rs.13,750/- awarded by the Tribunal, the appellant will be entitled to an additional compensation of Rs.1,34,410/- over and above what is

awarded by the Tribunal. This amount will carry interest at the rate of 7% per annum from the date of the petition till the date of realisation.

Appeal is disposed of as above.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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